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SPORTS FANS UNITED

ADVANCING THE INTERESTS OF AMERICA'S SPORTS FANS

May 6, 1994

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Office of the Secretary
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Washington, DC 20554

To who it may concern:

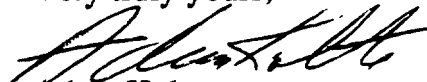
Attached are comments which our organization is submitting in response to the Commission's Further Notice of Inquiry into sports programming migration as per Section 26 of the Cable Consumer Protection Act of 1992.

As we are filing these comments after the April 26 deadline, we request that the Commission make a special exception and accept our comments as part of the record of this proceeding.

The reason we were unable to meet the deadline was that the people in our organization most familiar with this issue were in Puerto Rico on business from mid-March to late April, and were not aware of the Notice until just prior to the deadline.

Thank you for your consideration.

Very truly yours,


Adam Kolton
Executive Director

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Before the
FEDERAL COMMUNICATION COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 26 of)
the Cable Television Consumer)
Protection and Competition Act)
of 1992)

PP Docket No. 93-21

Inquiry into Sports Programming)
Migration)

COMMENTS OF

SPORTS FANS UNITED, INC.

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May 6, 1994

Introduction

Sports Fans United is a not-for-profit organization that was founded in July of 1992 to "represent the needs and interests of sports fans in the United States." (Certificate of Incorporation of Sports Fans United, Inc. filed July 24, 1992, New Jersey) Sports Fans United has 405 members in 18 different states. The organization does not receive any funding from the sports establishment or the telecommunications industry.

Sports Fans United believes sports programming migration is a serious problem that adversely affects millions of American consumers. Moreover, we see disturbing developments that could severely restrict affordable access to televised sporting events in the future.

While Sports Fans United recognizes that Americans do not have a constitutional right to view sporting events, we do believe that the nation's professional and collegiate sports teams have a responsibility to keep the vast majority of their games accessible and affordable to the public that supports them. This support involves a range of subsidies, tax breaks, and antitrust exemptions not typically given to businesses.

While Sports Fans United cannot speak for all fans, we hope the following comments will give the Commission a sense of what many fans feel needs to be done in order to keep sports programming accessible and affordable.

MAJOR LEAGUE BASEBALL

National Network Broadcasts

Major League Baseball's new revenue sharing partnership with ABC and NBC greatly reduces fan access to both regular and post-season baseball and undermines the public interest in several ways. First, the agreement reduces "game of the week" broadcasts from 16 to 12; second, it eliminates all national daytime telecasts; and third, it prevents fans from watching the playoff games of their choice.

In its own comments to the Commission, MLB claims that, "Baseball has relied upon the type of widespread exposure which broadcast television affords in order to maintain the necessary fan support. That support is a critical element in promoting attendance at baseball games and generating other sources of revenue for the clubs." Yet, by reducing the national network games to but a dozen, MLB is risking the same erosion in popularity that took place when it cut "game of the week" telecasts to 16 in 1988. That same year, a *New York Times* poll revealed that 60 percent of Americans called themselves "baseball fans." Just five years later a poll conducted by EDK Associates showed only 42 percent did. (source: commentary by Curt Smith / *USA Baseball Weekly*, 9/93)

The 1988 deal also created an enormous disparity: Those who had cable could see 191 games on ESPN and CBS, those who did not only could view 16. Since network exposure is critical to building fan support, it's understandable that these reductions led to significant decreases in ratings for national baseball telecasts. The estimated 90-100 million Americans who have neither access to local telecasts or cable can hardly be as excited to tune in when the playoffs come along.

Just as regular season games generate interest in the post-season, day games attract children. Here again, MLB has been woefully shortsighted. Its \$1.06 billion CBS deal ensured that few children on the East coast could stay up late enough to see the World Series. (Games started at 8:30 PM on the East Coast and frequently ended after midnight.) Also, most teams have greatly reduced the amount of day games they play. Not surprisingly, the Nielson ratings show a substantial drop in national viewership of regular season baseball games among 12 - 17 year olds. Conversely, basketball and football have experienced ratings increases among this age group.

The ABC/NBC baseball deal is even worse for young fans. Yes, post-season games will have an earlier starting time, but for the first time ever, there will be no national daytime regular season or post-season games -- none at all!

Most egregiously, the new TV deal prevents fans from seeing every baseball playoff game. Previously, fans living anywhere in the country had the option of watching all of the playoff games in each league -- a maximum of 21. Now, fans will only be able to see 19 out of a maximum of 41 playoff games. So despite the addition of "wild card" teams to the playoffs, fans will be able to watch less games than before. Even fans seeking to watch both the American and National League Championship Series will be only be able to watch one or the other.

For the millions of fans who don't live in the same city as their favorite team, this has dire consequences. If they want to see their favorite team play they can: (1) travel to the nearest city where the game is televised; (2) go to a sports bar the has a satellite dish; or (3) purchase a satellite dish.

Many other fans -- especially those living in cities with two teams -- are either loyal to the American or National League and won't necessarily be interested in seeing the team with the closest geographical proximity. For example, many New York Mets fans would prefer to watch the National League playoff games, even if the Yankees are in the playoffs.

MLB undoubtedly knows there is a huge segment of the population that would like to watch all the playoffs or at least a different playoff game than the one they will televise in a particular region. MLB hopes that by creating an artificial scarcity of playoff baseball on TV, it will fuel a demand, which it can meet with pay-per-view. Chicago White Sox owner Eddie Einhorn, one of the chief architects of baseball's new TV deal, was quoted as saying the playoff games not shown to a particular region could someday appear on pay-per-view as a "public service." (New York Post 5-19-93)

Since new technologies will make the public far more comfortable with pay-per-view, it will become more enticing to MLB and other sports leagues. For example, Time Warner's 150 channel Quantam Project in Queens, NY devotes 75 of its stations to solely to pay-per-view. Unlike many cable systems that require viewers to order pay-per-view on the telephone, Quantam allows the customer to simply press a "menu" button of the remote control to access a pay-per-view guide and simple ordering process. As a result, its customers are ordering pay-per-view sports, movies and other services at much higher rates than those of other systems.

Already a number of baseball teams are using or have used pay-per-view including: the California Angels, Cincinnati Reds, Los Angeles Dodgers, Minnesota Twins and San Diego Padres. Since new technologies will make it even easier for teams to market games via pay-per-view, fans have reason to be alarmed about the future availability of baseball on TV.

Local Baseball TV deals

In its comments to the Commission, MLB claims that, "There is no evidence that any club has abandoned, or intends to abandon, baseball's historic

commitment to presenting a substantial number of games on over-the-air television." But in 1987, that's exactly what New York Yankees owner George Steinbrenner did when he decided to offer the team's exclusive TV rights to the highest bidder rather than negotiate two separate agreements with broadcast and cable. Steinbrenner was willing to risk having all Yankee games appear on cable even though millions of New Yorkers either didn't subscribe or have access to cable.

Ultimately, the MSG Network secured exclusive rights for a record \$493.5 million to be paid over 12 years. This seemingly astronomical sum helped ensure the station's survival. Since MSG previously lacked any meaningful summer sports programming, the Yankees gave the station a way to compete more effectively with Sportschannel and ensured its continued presence on cable systems year round.

After attaining Yankee rights, MSG was also able to raise the rates it charged cable operators. Fees doubled from about 50 cents per subscriber per month to about \$1.00. MSG also went from a subscriber base of 2.3 million homes in 1988 to five million today. (source: Cablevision Magazine 01-02-89, p. 17; Notes on Negotiations For Yankee Baseball TV Rights, WPIX)

Not surprisingly, cable operators reacted to the fee increase by charging their subscribers more. Cablevision -- one of the area's largest operators -- even refused to carry MSG for an entire season. When it finally agreed to reinstate MSG, it did so only as a costly premium channel.

Meanwhile, Yankee fans who had previously seen 100 games on free TV in 1986 received only 40 in 1987-88; 75 in 1988-89; and 50 in 1991-93. Recently, MSG and WPIX have reached a new contract for 50 games per year for the next three years. That MSG and WPIX were ever able to come to an agreement had nothing to do with pressure put on by George Steinbrenner or Major League Baseball. Even when their most recent negotiations were on the brink of collapsing, Steinbrenner maintained that the issue was between MSG and WPIX. Interviewed on an all-sports radio station during an impasse in the negotiations, Steinbrenner said, "It's out of our hands...we're not involved in the negotiations...I don't think I have any right to step in."

Back in 1989, when the Yankees exclusive deal with MSG went into effect, only 5.8 percent of residents of the Bronx -- the borough where Yankee Stadium is located -- had cable in their homes, and only 2.9 percent of Brooklyn residents had cable. (source: U.S. Congress, Senate, 1991, p. 22). One would think that if there ever was a time for the Commissioner of Major League Baseball to protect the league's "historic commitment" to free TV it would have been then. Yet, no action was ever taken, nor has MLB ever attempted to influence the negotiations between MSG and WPIX.

A closer look at the finances of the WPIX/MSG deal also reveals troubling information about the ability of independent broadcast stations to compete with cable for sports programming. With its dual revenue stream of advertising and subscriber fees, MSG is able to generate substantially more revenue for each Yankee game on cable than on WPIX. Using ballpark figures released by WPIX during the recent negotiations, MSG generates \$41,000,000 for its 100 cable games and only \$8,925,000 for games on WPIX. So, despite significantly higher ratings for games on WPIX (5.7 versus 2.2 - 1993), cable games are far more lucrative.

Major League Baseball's Antitrust Exemption

Unlike any other sport or business, MLB enjoys a blanket exemption from the nation's antitrust laws. This exemption allows MLB to control supply and demand in a variety of ways that harm consumers and limit fans' access to televised baseball.

First, MLB has divided up North America into exclusive television territories. Teams may not negotiate agreements to televise games outside of these designated territories (the exception being the "superstation" teams). As a result, fans see far fewer baseball games than they would without these restraints on trade. For example, a Boston Red Sox fan living outside of New England is precluded from watching the majority of that team's games. He can't even purchase a subscription to New England Sports Network, the cable station that carries 82 Red Sox games -- MLB's policies won't allow him to.

Similarly, the Red Sox would be precluded from selling a package of games to a station in Miami as it would infringe on the Marlins exclusive territory. Absent these barriers, stations who are unable to gain the telecast rights to the local team, would have the option of bringing in a package of attractive games to compete with the local team's telecasts. If, for example, WPIX lost the Yankees, it could then seek contracts to broadcast the most desirable Phillies, Blue Jays, and San Francisco Giants games. Also, few teams would abandon free TV if they thought their games would be replaced by other teams' games on the very same station.

By not allowing stations to bring in out of market games, fans get less baseball at much higher prices. Obviously, the more available baseball programming there is, the less cable sports channels can charge their subscribers.

Another way fans are hurt by baseball's exemption is through the paralyzing effect it has on cities where teams are located. Since MLB limits the number of teams to fewer than the market will support, franchises frequently threaten to relocate in order to gain new, publicly financed stadiums or special tax breaks and subsidies. Consequently, cities have very little bargaining leverage with baseball teams. Minneapolis cannot, for example, make public subsidies conditional on the

Twins airing a certain percentage on games on free TV. If they did, there's a good chance the team would simply pick up and move. So, despite the hundreds of millions in subsidies doled out to MLB teams by taxpayers, cities are unable to negotiate a stadium lease agreements that require teams to keep their games affordable and accessible to the public.

Recommendations

Major League Baseball should not be allowed the place artificial restraints on the marketplace that limit the number of games fans can see. In denying Americans the opportunity to watch both league championship series, MLB has demonstrated that it will continue to put its own short-term financial interests ahead of the public interest. Sports Fans United, therefore, urges the Commission to recommend that Congress not only repeal MLB's exemption from the antitrust laws, but also legislate the break-up of Major League Baseball.

The American and National Leagues should be required to compete with each other as separate business entities. This would force each league to make its own telecasting agreements and expansion decisions. Rather than one national network deal, fans would most likely get two, including all of the playoffs on free television. After all, neither league could afford to allow the other far greater exposure.

As true business competitors, the leagues would also expand more rapidly. The American League, for example, might quickly reward a franchisee to St. Petersburg for fear that the National League would do so first.

Teams would no longer threaten to move for fear that a team from the rival league will take their place. Consequently, cities would attain vastly greater bargaining leverage with their teams, and be able to demand lease agreements that guarantee that a percentage of games be kept on free TV.

The National Football League

Like MLB, the National Football League has benefited from special antitrust privileges that greatly reduce fans' access to televised football. The league's monopoly status, stemming from its congressionally approved merger with the AFL, allows the it to maintain an artificial scarcity of games on television.

For example, the NFL's TV rule which blacks out games not sold out in advance would probably not be in effect had the AFL and NFL remained competitors. If the New England Patriots don't sell out and its games are not televised, it is of little financial consequence to the NFL or the Patriots if a different game is shown to Boston area fans. If, however, the Patriots were part of the old AFL and its games were blacked out, the NFL would most certainly televise its best match-up in the Boston market. Consequently, the AFL would be less inclined to blackout Patriots games because they would need to compete for viewers with the NFL. Since local teams generally get better ratings, even when they're not playing well, a competing league system would translate into fewer, if any, blackouts.

In some instances, blackouts unfairly penalize cities with large stadiums. Numerous Los Angeles Raiders games have been blacked out, in part, because the L.A. Coliseum's capacity of 100,000 was too big for football. At Al Davis' insistence, the city has had to reduce this capacity at its own expense so that games might be televised.

The NFL also does not allow the networks to broadcast games opposite that of the local team. So, if the Chicago Bears are playing on FOX, NBC is not allowed to televise another game in Chicago at the same time.

The NFL's monopoly power is further enhanced by the antitrust exemption granted to the league in the Sports Broadcasting Act (SBA) of 1961. Right now, each NFL team generates the same amount of TV revenue, regardless of whether its game is televised. Since the SBA is important to the survival of smaller market teams, Sports Fans United does not object to it entirely; however, we believe the NFL's national cable contracts are a violation of the antitrust laws. Congress did not intend the SBA to apply to anything other than over-the-air television.

Sports Fans United is also concerned that the NFL's newly announced policy of charging taverns for out of market games is a precursor for pay-per-view on a much wider scale. For example, the league may soon decide to offer out of market games to individual households on a pay-per-view basis.

Recommendations

Sports Fans United believes that the NFL should be forced to either rescind or relax its blackout policies which prevent millions of American fans from watching their favorite teams. In addition to those who cannot afford to pay the high cost of tickets, there are other fans -- senior citizens, physically handicapped or disabled -- who have no way to attend games in person. Moreover, there is very little evidence supporting the NFL's contention that the blackout policies are needed to protect "the gate." Were it not for Congress approving the NFL's merger with the AFL, and passing the SBA, there wouldn't be any blackouts to begin with. It is, therefore, appropriate for the Commission to demand an overhaul of this restrictive policy.

The NFL TV rules which do not allow fans to see games on the network not showing the local team also need to be modified. Other limitations which prevent fans from choosing between two games on different networks should also be changed. The rules are an abuse of the league's monopoly power and a detriment to consumers.

National Basketball Association and National Hockey League

Though most of our comments focus on MLB and the NFL, we also believe sports programming migration and anti-competitive practices are harming fans of the NBA and NHL. Of particular concern are:

- the NBA's efforts to prevent fans from seeing Bulls games on superstation WGN;
- the NBA's blacking out of TNT playoff telecasts when a local cable station is also carrying the game;
- the NBA and NHL's exclusive home telecasting territories;
- the failure of the Madison Square Garden Corp. to show any New York Knicks games on local broadcast TV;
- the limited number of New Jersey Nets and Philadelphia 76ers games on free TV;
- the use of pay-per-view by the Phoenix Suns, Houston Rockets, Portland Trailblazers, and San Antonio Spurs;
- the use of playoff pay-per-view by the NHL's Pittsburgh Penguins, Minnesota (Dallas) North Stars, and Chicago Blackhawks.

Since the NBA and NHL are not exempt from the antitrust laws, Sports Fans United urges the Commission to ask the Justice Department to launch an investigation of both the NBA and NHL's exclusive home market television territories to ascertain the extent to which consumers are being harmed by these practices.

In light of the extensive use of pay-per-view by both the NBA and NHL, Sports Fans United also urges the Commission to recommend to Congress that the rates fans must pay for pay-per-view championship sporting events be regulated or that these practices be banned entirely.

Other Comments

Sports Fans United is concerned that the Commission has not had the opportunity to fully study sports programming migration. From our perspective, the tentative findings in the Commission's Interim Report appear to be based largely on information provided by the telecommunications and sports industries in response to the Notice of Inquiry.

Sports Fans United wonders what the Commission has done to investigate and analyze the social consequences of sports programming migration as mandated by the Cable Act. Further, given the lack of commentators speaking on behalf of regular fans -- the constituency Congress was most concerned with when it required this study -- Sports Fans United wonders to what extent the Commission has made an effort to seek their views.

We therefore urge the Commission to ask Congress to authorize an on-going study of the issue, in which the Commission submits regular reports to Congress. These reports should not only focus on what the Commission has narrowly defined as sports programming migration, but also on how much it costs fans to watch their local teams on TV and whether a significant segment of the population is being denied access to some games.